

HISTORY OF LEGISLATION PROHIBITING ALIENS FROM RADIO BROADCASTING IN THE UNITED STATES

The regulation of radio broadcasting is within the plenary power of Congress.¹ The first Act of Congress which involved radio transmission was enacted in 1910 and since that time Congress has passed a number of Acts to control radio broadcasting for the purpose of safeguarding the public interest. It has been held that governmental control does not conflict with constitutional provisions; "free speech" does not include the right to use radio facilities without a license.²

Presently the Federal Communication Commission is Congress' administrative agent to aid in carrying out the objectives of the Federal Communications Act of 1934 including the allocation and regulation of use of radio frequencies by prohibiting such use except under license.³ To qualify for a license, a radio broadcasting station must show that it will operate in the public interest and be a trustee for the public.⁴ Radio broadcasting is subject to the provisions of the Federal Communications Act of 1934 as amended (Title 47 USC 151-609); section 301 of which states the purpose of the chapter among other things is "to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof." The Act specifies that a license is necessary for the operation or use of "any apparatus for the transmission of energy or communications or signals by radio."⁵ The Federal Communication Commission conducts hearings on applications for licenses to broadcast. A denial of a hearing granted by statute is usually construed as a denial of due process of law. However, there are occasions when the Federal Communication Commission may reject an application without a hearing.

Aliens: If an applicant admits he is an alien, his application will be denied without a hearing because he is disqualified by Section 310(a) of the Act which states:

"(a) The station license required hereby shall not be granted to or held by--

- (1) Any alien or the representative of any alien;
- (2) Any foreign government or the representative thereof;
- (3) Any corporation organized under the laws of any foreign government;

1. WORD Inc. v. FCC; 1945, 153 F 2d 623 at 628.
2. National Broadcasting Co. v. U.S.; 1943, 319 US 190 at 474.
3. FCC v. Sanders Bros. Radio Station; 1940, 309 US 470; 48 Stat. 1064, 47 USC Sec. 151 et seq.
4. McIntire v. Wm. Penn Broadcasting Co.; 1945, 151 F 2d 597; cert. denied 327 US 779.
5. Sec. 301.
6. Dicta from Storer Broadcasting Co. v. U.S.; 1955, 220 F 2d 204.

(4) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;

(5) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted, after June 1, 1935, by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or the revocation of such license."

If an applicant denies he is an alien or otherwise is disqualified under any other provision of Section 310(a) but is found to be such after a hearing conducted on that issue, his application will be dismissed without further hearing.

History of 310(a): The first comprehensive statute for control of radio broadcasting was the Radio Act of 1912.⁷ It required that a license be obtained from the Secretary of Commerce and Labor before a person, company, or corporation within the jurisdiction of the United States could "use or operate any apparatus for radio communication as a means of commercial intercourse among the several states, or with foreign nations."

Section 2 of the Act was more specific in that it gave to the Secretary of Commerce and Labor authority to issue licenses in such form as he "shall determine and shall contain the restrictions, pursuant to this Act, on and subject to which this license is granted." The first restriction on the issuance was then set out; "that every such license shall be issued only to citizens of the United States or Porto Rico or to a company incorporated under the laws of some state or territory or the United States or Porto Rico or to a company incorporated under the laws of some State or Territory or of the United States or Porto Rico, and shall specify the ownership and location of the station."

Shortly after the passage of the Act a New York corporation, either a subsidiary of or owned by alien interests applied for a license to operate a wireless telegraph station in New York.⁸ The Attorney General advised the Secretary of Commerce and Labor that the latter had no discretion to deny the application.⁹ The Attorney General's opinion was based on the fact that the 1912 Act did not exclude domestic corporations whose stock was owned or controlled by foreigners. The requirement of Section 2 of the Act was met in that case even though the stock was owned by German interests. Apparently there was some pressure to withhold the license until the German government would guarantee the right of

7. 37 Stat. 302.

8. Warner, Radio and Television Law; p 544.

9. 29 Op. Atty Gen. 579.

Page Denied

Next 2 Page(s) In Document Denied

2. The "public interest", a much bandied about term in the history of this Act, may be served in certain cases by an alien-controlled broadcasting station.

3. The Army and Navy were opposed to alien-controlled commercial broadcasting; they made no reference to non-commercial broadcasting.

4. The United States today is a world leader in radio broadcasting and the rationale of fear of competition is not as applicable as it was in the 1920's.

5. The alien provisions of the Acts of 1912, 1927 or 1934 appear to have evoked comparatively little interest in committee and on the floor of either House.